

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.
	)	91 CV 00578-JLF
NL INDUSTRIES, INC., et al.	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
CITY OF GRANITE CITY, ILLINOIS,	)	
et al.	)	
	)	
Intervenor/Defendants.	)	

**MEMORANDUM IN SUPPORT OF GRANITE CITY'S**  
**MOTION TO FILE A FIRST AMENDED COUNTERCLAIM**

The City of Granite City, Illinois ("City" or "Granite City") requests that this Court grant it leave to file a counterclaim against Plaintiff, the United States of America ("the government" or "U.S. EPA"), pursuant to FRCP 13, to enjoin the government from going forward with a portion of its selected remedial action for the Taracorp/NL Industries Superfund Site ("Site") until the government fully complies with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq.

In ~~the~~ First Case Management Order, entered February 21, 1992, this Court stated that the City would "be allowed to file a counterclaim at any time upon leave of Court." Under Rule 13(f) of the Federal Rules of Civil Procedure, leave to file a counterclaim should be granted "when justice requires." It is generally recognized that courts should be liberal in granting



parties leave to file counterclaims. See 6 C. Wright, A. Miller, & M. Kane, Federal Practice & Procedure 1430.

Excavation and removal of soil that contained lead at levels greater than 500 parts per million ("ppm") was chosen by the federal government as the remedy for residential yards in Granite City in the Record of Decision the U.S. EPA issued on March 30, 1990. The same 500 ppm standard was reaffirmed by the U.S. EPA when it issued its Decision Document/Explanation of Significant Differences, in October 1995. As stated in the First Amended Counterclaim, U.S. EPA's choice of this residential soil remedy violated CERCLA mandates to choose a remedy that is necessary and appropriate for the Site, and to take into account health threats created by the remedy.

As a consequence of the settlement reached in September 1994, after Granite City filed injunctive relief to halt the clean up of seventy two (72) residences, Granite City retained Dr. Robert Bornschein of the University of Cincinnati to study the residential properties remediated by the U.S. EPA, to determine if the removal of soil would substantially reduce the risk of further lead exposure to the residents. The study demonstrated the soil becomes recontaminated after the completion of abatement activities, due to other lead contaminated sources. In addition, the results of the Madison County Exposure Study show that Granite City does not have a blood lead problem and that soil lead levels do not have a measurable effect on blood lead levels.

Because the government has failed to perform its mandated duties, it now is poised to undertake an inappropriate, unnecessary, and potentially harmful cleanup. The City seeks to protect the health, safety and property interests of the residents which will be adversely and irreversibly impacted by the chosen remedy. In addition, Granite City has a strong interest in blocking the residential soil removal because it owns property that U.S. EPA plans to excavate.

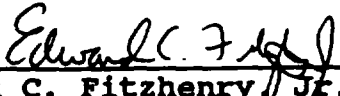
These soil removal activities will cause irreparable harm to the City. Justice requires Granite City be permitted to file its First Amended Counterclaim to protect its and its residents' health, safety, and property interests.

The City therefore respectfully requests that this Court grant its Motion for Leave to File a First American Counterclaim.

Respectfully submitted,

CITY OF GRANITE CITY, ILLINOIS,  
Intervenor/Defendant

By: \_\_\_\_\_

  
Edward C. Fitzhenry Jr.  
City Attorney  
Lueders, Robertson & Konzen  
1939 Delmar  
P.O. Box 735  
Granite City, Illinois 62040  
ARDC No. 06180218

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